



INTERNATIONAL TRADE COMMISSION

Investigation Nos. 337-TA-867/861(Advisory Opinion Proceeding)

Certain Cases for Portable Electronic Devices

Termination of an Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate an advisory opinion proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337-TA-861 on November 16, 2012, based on a complaint filed by Speculative Product Design, LLC of Mountain View, California (“Speck”). 77 *Fed. Reg.* 68828 (Nov. 16, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cases for portable electronic devices by reason of infringement of various claims of United States Patent No. 8,204,561 (“the ’561 patent”). The complaint named several respondents.

The Commission instituted Inv. No. 337-TA-867 on January 31, 2013, based on a complaint filed by Speck. 78 *Fed. Reg.* 6834 (Jan. 31, 2013). That complaint also alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cases for portable electronic devices by reason of infringement of various claims of the ’561 patent. The complaint named several respondents. On January 31, 2013, the Commission consolidated the two investigations. *Id.*

All the participating respondents were terminated from the consolidated investigations as a result of settlement agreements, consent motion stipulations, or withdrawal of the complaint as to them. A number of the named respondents defaulted. On February 21, 2014, the ALJ issued his final initial determination finding a violation of section 337 as to claims 4, 5, 9, and 11 of the ’561 patent by the defaulting respondents and recommended issuance of a general exclusion order (“GEO”). Based on evidence of a pattern of violation and difficulty ascertaining the source of the infringing produces, the

Commission agreed with the ALJ and issued a GEO directed to cases for portable electronic devices that infringe one of claims 4, 5, 9, and 11 of the '561 patent.

On September 4, 2014, Otter Products, LLC of Fort Collins, Colorado (“Otter”) filed a request with the Commission asking for institution of an advisory opinion proceeding to declare that its Symmetry Series Products are not covered by the general exclusion order. On October 1, 2014, complainant Speck filed an opposition to Otter’s request. On October 22, 2014, the Commission determined to institute advisory proceedings to determine whether Otter’s Symmetry Series products infringe one or more of claims 4, 5, 9, and 11 of the '561 patent. On October 24, 2014, Otter filed a motion to withdraw its request for an advisory opinion. Notice of the proceeding was published in the *Federal Register* on October 28, 2014. 79 *Fed. Reg.* 64214-15 (Oct. 28, 2014).

The Commission has determined to grant Otter’s request and has terminated the advisory proceeding.

The authority for the Commission’s determination is contained in sections 335 and 337 of the Tariff Act of 1930, as amended (19 U.S.C. § § 1335, 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Issued: November 7, 2014

Lisa R. Barton

Secretary to the Commission

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